

Maximilian Steinbeis Sa 16 Sep 2017

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Commission President Juncker has delivered his [State of the Union speech](#), proposing a whole list of reform and policy measures which are now being weighed and sorted and interpreted by the usual experts and, other than that, go by largely unnoticed. Even days before the national elections in the largest EU member state, the near-death experiences of the Euro and the refugee crisis notwithstanding, nobody seems to give much of a damn about the State of the Union out there. We have been whirled about for so many years in Angela Merkel's kettle of pragmatism, along with always the same problems, hopes and frustrations, that we can hardly imagine any more how it feels to contemplate politics as a highly charged political field of polarization – to a degree that the longing for political tension seems almost a bit silly, nostalgic, even dangerous. At this risk, I would like to make a proposal: Let us consider, for the sake of trial, the present situation as a polarized political field. Perhaps that helps making a choice in next Sunday's election.

Alright, then. Let us say we are faced with a decision. We stand before a fork road. The middle of the road is no longer viable; that route ends in the sticks at best, on a tree at worst. We have a decision to make: One road leads towards a stable, fair and democratically legitimized Eurozone with all the competences and institutions necessary for its functioning, a club of currently 19 that monitors the compliance of its members and tells applicants what prerequisites they have to fulfill, and really means it. The other road means prioritizing the joint project of the 28 (plus the half dozen prospective member states on the Balkan, and minus the UK) as an imperfect but workable legal framework for its diverse members to manage their economic and ideological differences with as little political tension as possible.

Let us say Emmanuel Macron fights for one direction and Jean-Claude Juncker for the other – a polarization that does not polarize as much as it should partly because it includes itself: whether or not to polarize is part of the question. Nevertheless, there it is: Macron or Juncker. This way or that. A decision will have to be made over the next six months and will shape the next half-century. We, as European Citizens, are called upon to make it.

I am with Macron. I have the utmost respect for Juncker and the achievements of his generation, including the eastward expansion and the monetary union, their success in overcoming national antagonism and defining and developing the European common good. But the antagonism we face now cuts across nations. The new essentialist internationale we have to deal with is in antagonism to the European common good itself. Seeking common ground with them in that matter is like discussing epistemology with liars or private law with thieves. Therefore: Macron.

So, who should I vote for next Sunday? That depends on the resulting coalition options, and those I measure first and foremost on how much they will help Macron succeed. That seems to me to be the historic task facing us voters in 2017. If I go through the parties (and keep in mind that the CDU comes in a package with the CSU), then the choice is not that difficult.

That just will not do

Juncker's State of the Union address has been interesting in other respects, too: [MICHAEL ZORNOW](#) picks apart his comments on free trade agreements and shows how the EU intends to avoid future TTIP and CETA disasters, much to his "sovereignty-aware" disapproval (in German).

The CJEU's ruling on the refugee relocation last week is frowned upon by [MARTIN NETTESHEIM](#): The way Hungary, Slovakia and others have been subjected to the obligation of accepting refugees against their sovereign will was in fact by no means as unproblematic as the court assumes, writes Nettesheim and asks how far Luxembourg wants to go in softening the law's power to bind political utility (in German).

The European Parliament, in its turn, has to face harsh criticism this week as well, by the hand of its former

Member [ANDREW DUFF](#) who blames it to miss a golden opportunity to take a step towards proper, democratic, transnational elections, opened by Brexit.

Just for equity's sake: Karlsruhe is another place where Verfassungsblog has probably not been an unequivocally joyful experience to read this week. Few articulate their critique of the German Federal Constitutional Court's EU jurisprudence as bluntly as the economist [HEINER FLASSBECK](#), who calls the latest referral decision on quantitative easing "complete nonsense" and offers to teach the Second Senate a "basic course in unorthodox economics" himself (in German).

The closer we get to 1 October, the more anguished Europe looks at Catalonia and the unconstitutional independence referendum scheduled for that day. [JOSÉ LUIS MARTÍ](#) brings us up to date and shows why our concern for constitutionalism in this part of Europe is more than justified. For that matter, I will go to Barcelona on 1 October and take a closer look at the situation. Stay tuned for more about this on Verfassungsblog.

[KARLSON LEUNG](#) has written a comparative analysis of the Indian Supreme Court's ruling on the Muslim Triple Talaq divorce practice, emphasizing how demanding it is to reconcile religious diversity with constitutional values. Speaking of Shari'a divorce law, there was also an interesting CJEU Advocate General opinion about the recognition of Talaq divorces abroad, on which we expect a contribution from NADJMA YASSARI.

As, on top of all this, we might also face the prospect of nuclear war, [MONIKA POLZIN](#) examines what international law says about a possible military strike by the USA against North Korea: "The basic question here is whether in a situation in which a rogue state already has nuclear weapons, the authorization of military sanctions will ever be a possible solution to maintain and restore world peace according to Art. 42 of the UN Charter. For it is precisely a collective military strike against a state which possesses nuclear weapons contrary to international law that can lead to the nuclear war, which must not happen" (in German).

Elsewhere

[MANUEL MÜLLER](#) provides a well-reasoned and instructive example of expert interpretation of Juncker's various policy proposals (in German).

[MAREK DOMIN](#) describes the constitutional drama about the amnesties of the corrupt former president Mečiar in Slovakia.

[MICHAL HAIN](#) analyses two new decisions of the British Supreme Court which might put the British constitutional principle of parliamentary sovereignty into perspective.

[CONRAD BOSIRE](#) takes a deeper look at the decision of the Kenyan Supreme Court to invalidate the presidential election.

So much for this week. All best, and take care,

Max Steinbeis

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